

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Rodriguez	Team: Team # 2	CCRB Case #: 200103340	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/09/2001 11:45 AM	Location of Incident: 42nd Street station between Times Square and 8th Avenue	Precinct: 14	18 Mo. SOL 11/9/2002	EO SOL 11/9/2002	
Date/Time CV Reported Wed, 05/09/2001 12:55 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 05/09/2001 2:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Yu Lee	20729	917865	Transit Bureau District 01
2. POM Vincent Virbukas	22263	920944	Transit Bureau District 01
3. POM Theodore Federoff	26704	919026	Transit Bureau District 01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PSA David Paris	09752	909299	Transit Bureau District 01
2. POM Brian Fuller	19936	910434	Transit Bureau District 01
3. SGT Carl Meyer	04265	909431	Transit Bureau District 01

Officer(s)	Allegation	Investigator Recommendation
A.POM Theodore Federoff	Discourtesy: PO Theodore Federoff spoke rudely to § 87(2)(b)	
B.POM Vincent Virbukas	Discourtesy: PO Vincent Virbukas spoke obscenely and/or rudely to § 87(2)(b)	
C.POM Theodore Federoff	Abuse: PO Theodore Federoff did not provide his name and/or shield number to § 87(2)(b)	
D.POM Vincent Virbukas	Abuse: PO Vincent Virbukas did not provide his name and/or shield number to § 87(2)(b)	
E.POM Yu Lee	Abuse: PO Yu Lee did not provide his name and/or shield number to § 87(2)(b)	
F.POM Yu Lee	Discourtesy: PO Yu Lee spoke obscenely and/or rudely to § 87(2)(b)	
G.POM Vincent Virbukas	Abuse: PO Vincent Virbukas threatened § 87(2)(b) with the use of force.	

Synopsis

§ 87(2)(b) states that at approximately 11:45 AM on May 9, 2001 in the 42nd Street 8th Avenue subway station he witnessed three plain clothed males, identified during the investigation as PO's Federoff, Virbukas and Lee, speak discourteously to two unidentified "foreigners." After the interaction between the "foreigners and the plain clothed males ceased, § 87(2)(b) approached the plain clothed males and asked them who they were, believing that they held some form of official capacity. § 87(2)(b) confirmed that the males were police officers, at which time the officers proceeded to utter discourtesies to him and refused to provide their names and shield numbers to him. § 87(2)(b) identified these officers as PO Virbukas, PO Federoff and PO Lee. Furthermore, § 87(2)(b) alleged that PO Virbukas threatened him with the use of force by getting within an inch of his face and asking, "are you scared of me?" § 87(2)(g)

§ 87(2)(b) also stated that as he waited for a supervisor to arrive, an officer, identified as PO Brian Fuller, attempted to dissuade him from filing a civilian complaint. § 87(2)(g)

A delay was incurred in closing this case due to various unsuccessful attempts to schedule § 87(2)(b) for a photo viewing as well as awaiting a response from the Criminal Records Unit regarding any subway ejection forms completed by either PO Virbukas, PO Lee or PO Federoff on May 9, 2001.

Summary of Complaint

§ 87(2)(b)'s initial statement at the Transit District 1 command on May 9, 2001 reflected that officers spoke obscenely and or discourteously to him and to two unidentified foreigners. Also, the officers refused to provide their names and shield numbers to § 87(2)(b) (enc. 10 A-B).

§ 87(2)(b) was interviewed at the CCRB on May 21, 2001. In addition, § 87(2)(b) viewed officer photos at the CCRB on July 30, 2001. Summaries of these audio-recorded interviews are available in Enclosures 12 A-F & 13 A-I respectively. § 87(2)(g)

§ 87(2)(b) stated that as he stood near a subway map inside the 42nd Street subway station, he overheard three plain clothed males speaking to two individuals. A male and a female whom he described as "foreigners" because they were using a translation book to communicate with the three plain clothed males. § 87(2)(b) was initially unaware that the three males were police officers. He later identified the males as PO Federoff, PO Lee and PO Virbukas. According to § 87(2)(b) he overheard PO Virbukas tell the foreigners "You shouldn't be traveling in the States without first learning English." When the foreigners questioned who they were, PO Virbukas responded "You can't question who we are, just get the fuck out of here."

Although § 87(2)(b) did not know who the males were, he was not apprehensive in approaching the males because, from the way they spoke to the foreigners, he gathered that they held some form of official position. As such, after the foreigners walked away from the males, § 87(2)(b) approached the males, at which time he saw the top portion of a blue vest worn by PO Virbukas. § 87(2)(b) excused himself and asked them if they were police officers; when he did so, one male, whom he later identified as PO Federoff stated, "It's none of your business." PO Virbukas then stated "What the fuck does it matter to you who we are" prompting § 87(2)(b) to ask each one of them for their badge numbers. § 87(2)(b) stated he initially made a general request to the three of them for their names and badge numbers but immediately thereafter made eye contact with each one of them individually thereby directing the request to each of them. According to § 87(2)(b) he asked for the information three times; however, each time the officers failed to provide the information. After § 87(2)(b)'s first request, the third male, whom he identified as PO Lee, stated "Just fucking leave it alone." After making a second request, § 87(2)(b) stated that PO Virbukas stepped to within an inch of his face and asked,

“Are you scared of me?” Prompting PO Federoff to state “You shouldn’t be in his face”, referring to PO Virbukas, and then placed his arm on PO Virbukas’ chest and moved him back. After his third request for the officers’ information, § 87(2)(b) stated that PO Lee responded “We’re giving you nothing, we don’t have to give you anything.”

Consequently, § 87(2)(b) walked to a nearby payphone and dialed 911 telling the operator that he wanted to file a complaint against police officers. Subsequently, the operator instructed him to go to the token booth to ask the agent to request police response. § 87(2)(b) did so and approximately twenty to thirty minutes later, two uniformed police officers that § 87(2)(b) identified as PO Fuller and PO Paris arrived. During his conversation with PO’s Fuller and Paris, § 87(2)(b) stated that PO Federoff “attempted to mediate the situation” by approaching him and apologizing to him stating “[Can we] speak like men.” § 87(2)(b) responded by not making eye contact with or responding to PO Federoff. § 87(2)(b) requested from PO’s Paris and Fuller that they call a supervisor to the location so that he could file a complaint against the three officers. § 87(2)(b) stated that as they waited for the supervisor to arrive, PO Fuller attempted to dissuade him from filing a complaint against the three officers stating “Why do you want to make this complaint? These are good officers and they have done good things on the field. Why is this such a big deal? This will go on the officers’ records, you should consider not continuing with the complaint.” Approximately twenty-five minutes after PO’s Paris and Fuller arrived (forty-five minutes after his initial request that the token clerk call for uniformed police officers to arrive) a sergeant whom he identified as Sgt. Meyer arrived on the scene. According to § 87(2)(b) he returned to the 14th Precinct with Sgt. Meyer to file a complaint against the officers. § 87(2)(b) stated that he obtained PO’s Paris and Fuller’s names and badge numbers while at the location of incident. He filed the complaint and provided descriptions of the three initial subject officers at the precinct, the officer who took the complaint then provided him with the names of the officers.

At the conclusion of the interview, § 87(2)(b) stated that he hoped the officers would receive some form of sensitivity training and some form of culture or social science training so that they can better carry out their duties as police officers. However, during a subsequent phone conversation with § 87(2)(b) on August 29, 2001, he would not agree to mediation.

On July 31, 2001, § 87(2)(b) viewed single large photos of the subject officers in this case. Although § 87(2)(b) was unable to associate names with the faces, § 87(2)(b) positively identified each officer associating their faces to the actions and statements he alleged on his Civilian Complaint Report and during his CCRB interview. In each case, § 87(2)(b)’s accounts of the officers’ actions were consistent with his initial statements.

Results of Investigation

According to the officers, subway ejection forms were completed for the two unidentified tourists; however, the tourists’ names were not on the forms, as the officers stated they were not required to obtain their names. A request was made to the Transit Police Document Section on November 8, 2001 requesting any subway ejection forms completed by PO Virbukas, PO Lee and/or PO Federoff on May 9, 2001. A response was received on January 2, 2002 with negative results noting that there were no forms on file completed by these officers on May 9, 2001. § 87(2)(g)

A call was placed to the Transit Police Document section on June 22, 2001 to inquire as to the identity of a female station agent assigned to booth N63A at the incident location on the date of incident. Metropolitan Transit Authority Station Agent § 87(2)(b) was identified as the agent assigned to booth N63A on the date and time of this incident. § 87(2)(b) was interviewed at the CCRB on July 30, 2001. In addition to PO’s Lee, Federoff and Virbukas, PO’s Fuller and Paris were interviewed at the

CCRB regarding their interaction during this incident. § 87(2)(g)

§ 87(2)(b) The interaction Sgt. Meyer had with § 87(2)(b) was relegated, according to PO's Paris and Fuller to his asking § 87(2)(b) about what he wanted to do regarding the incident. When § 87(2)(b) responded that he wanted to go to file a complaint against the officers, the two left the location.

Witness Statement

§ 87(2)(b)

MTA Station Agent § 87(2)(b) was interviewed and viewed single large photos of the subject officers at the CCRB on July 30, 2001. A summary of the audio-recorded interview is available in Enclosures 14 A-D. § 87(2)(b) recollection of this incident was extremely vague, but she recalled that a male did request for her to summon police officers. § 87(2)(b) did not recall why the male required police assistance but stated that for her to summon the police it required that she be given a reason to do so. § 87(2)(b) stated it was possible that the male yelled for her and/or banged on the token booth window. However, she stated that this would have been done to get her attention and not for the purpose of being disruptive.

§ 87(2)(b) viewed single large photos of the officers at the CCRB on July 30, 2001 (encs. 15 A-H), but was only able to recognize two of the faces, PO's Virbukas and Lee. However, when asked what she recalled about them, she stated that she has seen them at the location several times and knows they are police officers. She was unsure if they were at this location on the date of this incident.

Officer Identification

PO Steven Federoff, PO Vincent Virbukas and PO Yu Lee

POs Federoff, Virbukas and Lee were interviewed at the CCRB on June 8, 2001. Summaries of their audio-recorded interviews are available in Enclosures 19 A-C, 21 A-C & 23 A-C respectively. § 87(2)(g)

§ 87(2)(b) Both PO Lee and PO Federoff stated they never interacted with § 87(2)(b) whereas PO Virbukas stated that his interaction consisted of his asking § 87(2)(b) if he was with the fare evaders and then telling him to step back after he responded that he was not with them. § 87(2)(g) Each officer stated that § 87(2)(b) was yelling; however, PO Federoff stated he could not hear what § 87(2)(b) was yelling because he was concentrating on the two fare evaders that had been stopped. PO Lee recalled that § 87(2)(b) yelled, "You have too much power" (enc. 23B). PO Virbukas stated that § 87(2)(b) walked in the middle of the officers and the two "foreigners" and yelled, "They can't do this. They don't have the right to do this" (enc. 21B). Although PO Virbukas stated that § 87(2)(b) walked in between the fare evaders and the officers, PO's Federoff and Lee stated that the interaction with § 87(2)(b) occurred behind them. Additionally, PO Federoff stated that § 87(2)(b) interjected but described the interjection as § 87(2)(b) "coming within to the space of where the two tourists were stopped." PO Federoff stated that § 87(2)(b) got very close to the officers, but stated that his actions only "bordered on interference" (enc. 19B).

PO Virbukas stated that when § 87(2)(b) walked in between them, § 87(2)(b) bumped his arm, which he believed was a threat to his safety. However, when asked why he did not arrest § 87(2)(b)

for this act, PO Virbukas stated that he did not do so because he did not believe the bump was done with the intent to cause injury. PO Virbukas stated that he “Knows the difference between someone making contact out of a mistake as opposed to someone making contact to intervene” (enc. 21B). When asked why he felt his safety was threatened if he did not believe the bump was intended to cause injury, PO Virbukas responded that “The bump was not aggressive, but it was done in an effort to get his attention, it was more than a tap” (enc. 21B). When asked what his response was to the bump to his arm, PO Virbukas responded that he asked § 87(2)(b) if he was with the two fare evaders, when § 87(2)(b) responded that he was not, PO Virbukas asked him to step back, which he did. After which, PO Virbukas stated he had no further interaction with § 87(2)(b). PO Lee stated that he heard PO Virbukas tell § 87(2)(b) to step back; however, PO Lee stated that § 87(2)(b) did not do so. Although PO Lee mentioned that § 87(2)(b) “bumped his *chest* with PO Virbukas’ *chest*” (enc. 23B), he explained that he did not witness the physical contact between § 87(2)(b) and PO Virbukas, but instead received the information from PO Virbukas later that day.

PO Federoff and PO Lee both stated that they never interacted with § 87(2)(b) however, PO Federoff stated that while he interacted with the fare evaders, § 87(2)(b) approached PO Lee and PO Virbukas and spoke with them. In contrast, PO Lee stated that he interacted with fare evaders during this incident and did not recall PO’s Virbukas or Federoff interacting with the fare evaders at any point. PO Federoff never mentioned any physical contact between PO Virbukas and § 87(2)(b) stating that because he was concentrating on the two fare evaders, he could not hear the conversation between § 87(2)(b) and PO Virbukas and paid no attention to any physical interaction that may have occurred between PO Virbukas and § 87(2)(b). PO Federoff stated that he never spoke with § 87(2)(b) or POs Paris and Fuller after they arrived. POs Lee and Virbukas also stated that they did not speak with POs Paris or Fuller after they arrived. However, both PO Virbukas and PO Lee stated that they saw PO Federoff approach and speak with PO’s Paris and Fuller. However, neither could hear what was being said because they were approximately fifty feet away from PO Paris and PO Fuller. PO Virbukas stated that while the conversation between the officers occurred, § 87(2)(b) was present; whereas, PO Lee could not recall if § 87(2)(b) was present. Neither was sure of why PO Federoff approached the officers but they believed the reason was that PO Federoff wanted to inquire as to why the officers were there, in the event they needed assistance. PO Federoff admitted that he walked in the direction of the officers, but when he saw they were with § 87(2)(b) he walked away without speaking to any of them.

The subject officers’ statements are consistent in that all stated that two individuals, a male and a female, were stopped for “doubling up” (fare evasion) and subsequently ejected. The officers were also consistent in that the two individuals were from Australia and had no problems speaking English. Each officer denied speaking obscenely, rudely and or discourteously to either the two fare evaders or § 87(2)(b). In addition, the officers denied ever being asked by § 87(2)(b) to provide their names and or badge numbers at any point, stating that the interaction with § 87(2)(b) was very brief (PO Virbukas) or never occurred (PO’s Federoff and Lee).

PO Brian Fuller and PO David Paris

Responding officers POs Paris and Fuller were interviewed at the CCRB on June 6, 2001 and July 2, 2001 respectively. Summaries of the audio-recorded interviews are available in Enclosures 17 A-C & 25 A-C. Neither officer witnessed the initial encounter between § 87(2)(b) and the three subject officers. However, PO Paris stated that § 87(2)(b) complained that the officers did not provide him with their names and shield numbers upon his request; whereas PO Fuller believed that § 87(2)(b) complained that the officers were discourteous to him. PO Paris’ memobook entry noted that a female station agent advised them that a male had harassed her by banging on the token booth window requesting that she provide him with the names and badge numbers of officers (enc. 16B). Both officers stated that § 87(2)(b) immediately pointed out the three subject officers to them when they encountered § 87(2)(b).

§ 87(2)(b) According to both officers, § 87(2)(b) appeared agitated. PO Paris described § 87(2)(b) as arrogant and “very weird”, stating that § 87(2)(b) “seemed to be a very strange individual in the way he was speaking and acting”, i.e. very loud, fast and “hyped up.” However, PO Fuller described § 87(2)(b) as “cordial and professional”, never yelling, screaming or uncooperative with him or PO Paris. Both officers stated that it took approximately twenty to thirty-five minutes for a supervisor to arrive at the location. During that time, both officers admitted to conversing with § 87(2)(b) and both officers stated that PO Federoff approached their location and spoke with § 87(2)(b). However, both were unable to hear the conversation between § 87(2)(b) and PO Federoff because PO Federoff and § 87(2)(b) walked towards each other and away from them. Although POs Federoff, Virbukas and Lee denied speaking with POs Fuller and Paris at any point, PO Paris stated that he did approach and speak with the officers about § 87(2)(b). According to PO Paris, he approached the officers and asked them what happened, at which time they told him that they were in the process of ejecting two fare evaders when § 87(2)(b) “[waltzed] in he middle of them out of the blue.” According to PO Paris, the officers told § 87(2)(b) to “back off.” When asked, PO Paris stated that he did not question the officers about § 87(2)(b)’s allegations that they did not provide their names and shields, stating that he “Did not want to get involved” and “It was not his place to question them” as he was not a supervisory officer.

When asked, PO Fuller denied ever attempting to dissuade § 87(2)(b) from filing a complaint against the officers. PO Fuller stated that because § 87(2)(b) “quoted chapter and verse from the patrol guide” he believed that he was an Internal Affairs officer and therefore was extremely cordial and professional with § 87(2)(b). However, PO Fuller stated that it was possible that he told § 87(2)(b) that the subject officers were good cops and were the types of officers that he would call upon for help if he needed it. PO Paris did not deny the possibility that his conversation with § 87(2)(b) could have included suggestions that he reconsider filing a complaint against the officers because they were good responsible cops. When asked why this could have been a possibility, PO Paris stated it was possible topic of conversation because § 87(2)(b) was dressed in a dirty T-shirt, his head was shaved bald and he “seemed to be a very strange individual in the way he was speaking and acting.” PO Paris described § 87(2)(b) as his speaking very loud and fast and he appeared to have a condescending tone of voice.

Both officers stated that they have known and worked with PO’s Federoff, Virbukas and Lee for a few years.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] with the exception of PO Lee, the subject officers have no prior substantiated CCRB case history. In CCRB Case number 9901374, PO Lee was substantiated for an allegation of Abuse of Authority: Unlawful Arrest and received a disposition of “Instructions” from the Police Commissioner.

Conclusions and Recommendations

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) The three subject officers each denied having any prolonged interaction with § 87(2)(b) and each denied speaking discourteously and/or refusing to provide their names and shield numbers. § 87(2)(g)
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§ 87(2)(g)

§ 87(2)(g)

Station Agent § 87(2)(b) stated that she vaguely remembered someone banging on the token booth window, but stated it was done in order to get her attention and not to be disruptive. § 87(2)(g)

§ 87(2)(g)

- A. Discourtesy: PO Theodore Federoff spoke rudely to § 87(2)(b) in violation of PG 203-9.**
B. Discourtesy: PO Vincent Virbukas spoke obscenely and/or rudely to § 87(2)(b) in violation of PG 203-9.
F. Discourtesy: PO Yu Lee spoke obscenely and/or rudely to § 87(2)(b) in violation of PG 203-9.

§ 87(2)(g)

The subject officers in this case alleged that they had stopped two fare beaters and were in the process of ejecting them when § 87(2)(b) interjected. However, while their memobooks note that two individuals were stopped and ejected around 11:45 AM, no notations exist as to § 87(2)(b) interjecting in the stop. Moreover, only PO Lee and PO Virbukas note in their memobooks that the unidentified foreigners were uncooperative (encs. 18C, 20C and 22 B-C). No record exists of any subway ejection forms completed by any of these officers on May 9, 2001 although they stated an ejection form was completed. § 87(2)(g)

§ 87(2)(g)

PO Virbukas and PO Lee state that § 87(2)(b) was yelling comments to the “fare beaters”; however, PO Federoff states that words, which he could not hear, were being exchanged by § 87(2)(b) and PO Virbukas. Although not witnessed by PO Lee or PO Federoff, PO Virbukas states that § 87(2)(b) got his attention because § 87(2)(b) bumped him in

his left arm when he interjected. PO Virbukas stated that he felt his safety was threatened when § 87(2)(b) § 87(2)(b) bumped him. However, when asked why he did not take any subsequent action against § 87(2)(b) § 87(2)(b) PO Virbukas stated that he did not do so because he was able to tell the difference between someone tapping him to try to get his attention and someone tapping him to try to harm him.

§ 87(2)(g)

§ 87(2)(g) Police
Department v. Bitchatchi and Matias, OATH Index Nos. 1996/00 & 1997/00 (September 8, 2000) discusses the use of discourtesies (encs. 3 A-D). In **Bitchatchi**, the judge stated that “Depending on the circumstances, profanity is permissible where the officer has resorted to such language in order to forcefully make a point, to gain compliance with an order or in the heat of a highly dangerous situation” (enc. 3C). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

C. Abuse of Authority: PO Theodore Federoff did not provide his name and/or shield number to § 87(2)(b) in violation of PG 203-09.

D. Abuse of Authority: PO Vincent Virbukas did not provide his name and/or shield number to § 87(2)(b) in violation of PG 203-09.

E. Abuse of Authority: PO Yu Lee did not provide his name and/or shield number to § 87(2)(b) in violation of PG 203-09.

POs Federoff, Virbukas, and Lee each deny that § 87(2)(b) asked them for their names and/or shield numbers at any point. According to PO’s Lee and Federoff, they never spoke with § 87(2)(b) PO Virbukas stated that his interaction with § 87(2)(b) consisted of his asking § 87(2)(b) if he was with the people that had been stopped and then telling § 87(2)(b) to “Please step back” after § 87(2)(b) § 87(2)(b) responded that he was not with the two individuals. § 87(2)(g)

§ 87(2)(g)

PO Federoff denied that he ever spoke with either officers Paris or Fuller, although PO Fuller, PO Virbukas and PO Lee confirm that he did. PO Federoff also denied speaking with § 87(2)(b) at any point although PO's Paris and Fuller each stated that he did. Aside from asking § 87(2)(b) if he was with the two individuals and then asking him to step back, PO Virbukas stated that he had no further interaction with § 87(2)(b). However, both PO Lee and PO Federoff stated that PO Virbukas had "spoken" with or "exchanged words with" § 87(2)(b). In every case, the officers stated that they could not hear any conversations because their attention was focused on the fare evaders.

§ 87(2)(g)

PO Paris recalled that § 87(2)(b) told him that the officers had refused to provide their names and shield numbers to him.

§ 87(2)(g)

Patrol Guide Procedure 203-09 stipulates that officers must provide their names and or shield numbers to anyone requesting the information and does not offer any exceptions for providing the information (enc. 2B). § 87(2)(g)

G. Abuse of Authority: PO Vincent Virbukas threatened § 87(2)(b) with the use of force, in violation of PG 203-10.

§ 87(2)(g)

§ 87(2)(g)

The Office of Administrative Trials and Hearings (OATH) was faced with the question of threat of force in **Police Department v. Briscoe, OATH Index No. 1328/00 (September 29, 2000)** and **Police Department v. Hughes, OATH Index No. 2055/00 (August 30, 3000)**, (encs. 4 A-G & 5 A-E) respectively. Judges in these cases relied on witness credibility and whether the threatened act was completed or could have been completed. It § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: